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and NYU Langone Hospitals*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NYU LANGONE HEALTH SYSTEM and
NYU LANGONE HOSPITALS,

Civil Action No. 23 Civ. 5032

Plaintiffs,

COMPLAINT

-against-

JURY TRIAL DEMANDED

NORTHWELL HEALTH, INC.,

Defendant.

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Plaintiffs NYU Langone Health System and NYU Langone Hospitals (collectively, “NYU Langone”), by their attorneys, Reed Smith LLP, for their Complaint against defendant Northwell Health, Inc. (“Northwell”), allege as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This case is about deceptive business practices. NYU Langone is seeking damages and injunctive relief for unfair competition, trade dress infringement, false advertising, and

deceptive trade practices based on Northwell’s pattern and practice of copying NYU Langone’s distinctive advertising and marketing campaigns, across various media, including, but not limited to, outdoor, digital, print, billboards, social, as well as email and fundraising communications – thereby creating actual confusion and a likelihood of confusion as to Northwell’s association or affiliation with, or sponsorship or endorsement by, NYU Langone. Certain of Northwell’s advertising also contains false and misleading statements of fact. (All of Northwell’s advertising at issue as alleged in this Complaint is referred to herein as the “Confusingly Similar Advertising”). Through its Confusingly Similar Advertising, Northwell has engaged, and continues to engage, in an apparent scheme to trade off the good will and reputation of NYU Langone, which is evidenced by the *U.S. News & World Report’s* 2022-2023 “Best Hospitals Honor Roll” rankings of the NYU Langone hospitals as # 1 in New York and # 3 in the nation, as well as a multitude of other accolades and high rankings for healthcare services, that Northwell has not achieved.

2. Northwell’s Confusingly Similar Advertising constitutes trade dress infringement, a false designation of origin, unfair competition and false advertising in violation of Section 43 of the Lanham Act (15 U.S.C. § 1125), unfair and deceptive trade practices in violation of New York General Business Law § 349, false advertising in violation of New York General Business Law § 350, and unfair competition and trade dress infringement under New York common law.

3. NYU Langone accordingly seeks a permanent injunction barring Northwell from creating and propagating the Confusingly Similar Advertising, as well as damages, attorneys’ fees, and such other relief as the Court deems just and proper.

THE PARTIES

4. Plaintiffs NYU Langone Health System (“Langone Health System”) and NYU Langone Hospitals (“Langone Hospitals”) are premier not-for-profit corporations, organized and

existing under the laws of New York, with their principal places of business at 550 First Avenue, New York, New York 10016. Langone Health System is a subsidiary of New York University (“NYU”) and is the sole member and parent corporation of Langone Hospitals. While not parties to this action, NYU Grossman School of Medicine and NYU Long Island School of Medicine, both divisions of NYU, operate medical schools identified within NYU Langone’s brand. NYU Langone was previously known as NYU Medical Center and then NYU Langone Medical Center.

5. NYU Langone’s rich history began in 1841, when six preeminent physicians and scientists founded Medical College of New York University (now NYU Grossman School of Medicine) under the aegis of NYU.¹ A little over a century later, in 1963, NYU established its own hospital, University Hospital in Manhattan (later known as Tisch Hospital and now NYU Langone Hospital—Manhattan), that remains the location of Langone Hospitals today.² Over this 182-year history, NYU Langone has continued to expand and innovate.³ Today, NYU Langone is internationally recognized as a preeminent academic medical center, and achieves daily its trifold mission to serve, teach, and discover through an integrated academic culture devoted to excellence in patient care, education, and research.⁴ Indeed, the nation’s leading arbiters of healthcare performance have consistently named NYU Langone’s hospitals among the top hospitals nationwide for quality and safety. As a result, NYU Langone enjoys extensive goodwill and consumer recognition among consumers.

6. Defendant Northwell is a not-for-profit corporation, organized and existing under the laws of New York, with a principal place of business at 2000 Marcus Avenue, New Hyde Park,

¹ <https://nyulangone.org/our-story>.

² *Id.*

³ *Id.*

⁴ *Id.*

New York 11042. Northwell claims to be the largest health system in New York,⁵ and owns and operates 21 New York metropolitan area hospitals, with the vast majority (*i.e.*, 16) on Long Island.

JURISDICTION

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1338, and 28 U.S.C. § 1367. NYU Langone's federal claims are predicated on 15 U.S.C. § 1125(a), and its claims arising under the laws of the State of New York are substantially related to its federal claims such that they form part of the same case or controversy.

8. This Court has personal jurisdiction over Northwell because Northwell regularly transacts business in New York, and this action arises out of its conduct in New York. Northwell maintains its principal place of business in New York, operates its office and administrative functions out of New York, and has directed its Confusingly Similar Advertising to consumers located in New York.

VENUE

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims herein occurred within this judicial district.

FACTUAL BACKGROUND

10. NYU Langone and Northwell are market competitors in New York State, in that they both provide healthcare services and operate healthcare facilities, including hospitals, education and research facilities, as well as outpatient facilities, in New York State.

11. Both NYU Langone and Northwell engage in advertising and marketing campaigns in New York State. Northwell, however, has recently engaged in a pattern of copying NYU Langone's distinctive advertising and marketing campaigns, incorporating NYU Langone's

⁵ <https://www.northwell.edu/about-northwell>.

unique color schemes (including predominantly featuring the same or a similar distinct purple color, which NYU Langone has used in its branding from inception, and indeed *for decades* prior when NYU Langone was previously known as NYU Medical Center, and then NYU Langone Medical Center) and certain specific accent colors, color combinations, font styles and types, headline styles, layout and format, and overall look and feel (the “Distinctive Advertising”).

12. The comparisons below of NYU Langone’s Distinctive Advertising and Northwell’s advertisements that followed suit could not be clearer: they show Northwell’s clear intent to copy NYU Langone’s Distinctive Advertising and create a false association or affiliation with NYU Langone where none exists. NYU Langone’s Distinctive Advertising is shown on the left, below; Northwell’s virtually indistinguishable advertising is on the right. (*See also Exhibit A* (showing further evidence of Northwell copying NYU Langone’s Distinctive Advertising).)

NYU Langone’s predominantly purple Distinctive Advertising

Predominantly Purple

NYU Langone

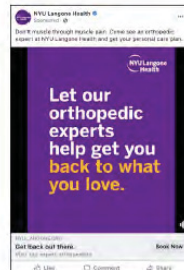


Media: Various (outdoor, social, digital, print, billboards, transit)
Date:
Transplant = January 2022
#1 Hospital = August 2022
Safety / Leapfrog = Spring 2022

Media: Social
Date: March 2021



Media: Online display
Date: October 2017

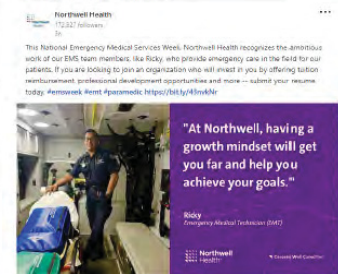


Media: Online display
Date: July 2019

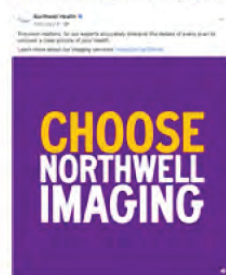


Northwell

Media: LinkedIn post
Date Posted: May 2023



Media: Social
First Run Date: February 8, 2023

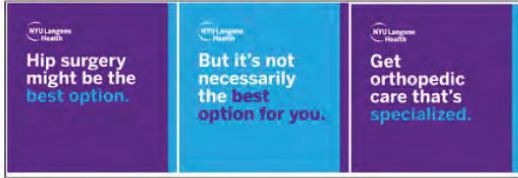


NYU Langone's purple with teal blue and white accents Distinctive Advertising

Purple with accent color

NYU Langone

Media: Social Media
Date: March 2021



Media: Online Display
Date: November 2019



Media: Online Display
Date: May 2021



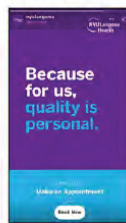
Media: Online Display
Date: June 2021



Media: Online Display
Date: October 2019



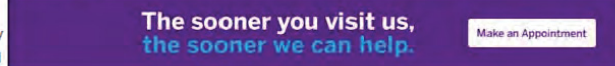
Media: Social Media
Date: March 2021



Media: Online Display
Date: May 2021



Media: Online Display
Date: May 2021



Northwell

Media: Paid Social (also print)
First Run Date: November 2022



Media: Online Display
First Run Date: January 3, 2022



Media: Online Display
First Run Date: October 22, 2021



Media: Online Display
First Run Date: October 18, 2021

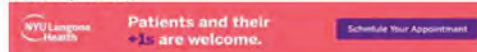


NYU Langone's purple with orange and white accents Distinctive Advertising

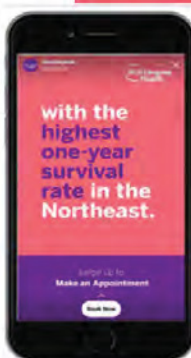
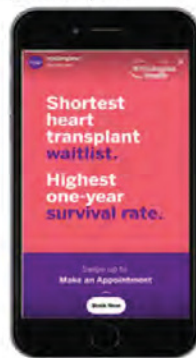
Purple with accent color

NYU Langone

Media: Online Display
Date: August 2020



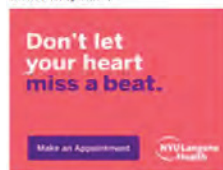
Media: Social Media
Date: January 2021



Media: Online Display
Date: June 2021



Media: Online Display
Date: May 2021



Northwell

Media: Print
First Run Date: November 8, 2021



Media: Online Display
First Run Date: July 11, 2022



Media: Online Display
First Run Date: September 20, 2021



Media: Online Display
First Run Date: July 19, 2021



13. The above examples (and the further examples in **Exhibit A**) show Northwell's deliberate and intentional copying of NYU Langone's Distinctive Advertising, and specifically the following elements, which together establish the overall look and feel of the Distinctive Advertising: the predominant use of the same or a very similar color purple, the use of the same or similar accent colors (*e.g.*, teal and orange), specific font types, colors and styles (*i.e.*, all cap sans serif white headlines, as well as white font with certain words and phrases emphasized in the same or similar accent colors), similar layouts in terms of placement and use of accent colors and photos, and use of the same headline style and format. Northwell's Confusingly Similar Advertising demonstrates Northwell's plain intent to trade off of the goodwill and reputation of NYU Langone, and its significant investment in its brand, by strongly suggesting an affiliation or association with NYU Langone – its key competitor that has achieved high rankings and accolades in New York and nationwide – success that Northwell has not itself achieved.

A. NYU Langone's Historic Use of Purple in Its Advertising

14. The color purple is, and for over 150 years has been, closely associated with NYU. The origin of NYU's century-plus use of the color purple, and particularly violet, dates back to at least 1868 when violet appeared as the color of NYU (formerly known as "University of the City of New York," founded in 1831) in *Carmina Collegensia*, by H.R. Waite (a book of college songs).⁶ Indeed, further evidencing NYU's historic use of violet, for over 100 years, NYU athletes have worn violet and white colors and are still known as the "Violets" today.⁷ Moreover, for at least the last 50 years, NYU style guides have specifically identified the color violet as NYU's officially adopted color.

⁶ <http://intercollegiate-registry.org/nyu/>.

⁷ <https://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook/the-university/history-and-traditions-of-new-york-university/university-traditions.html#:~:text=The%20origin%20of%20the%20University,of%20the%20original%20university%20building.>

15. NYU's subsidiaries (including NYU Langone) have also adopted and continue to use purple as the principal color in their branding, establishing their affiliation with NYU. Indeed, the entrance to NYU Langone Hospital—Manhattan incorporates NYU Langone's decades-long use of the color purple as part of its branding:



16. NYU Langone's other hospitals and medical centers similarly are branded with NYU Langone's distinctive purple, including, for example, NYU Langone Hospital—Long Island, Perlmutter Cancer Center, and Orthopedic Hospital:



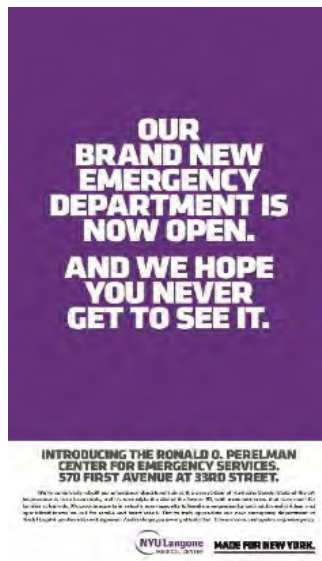


17. In addition to using the color purple to denote its hospital facilities, NYU Langone has used purple as a predominant color in its advertising – for decades – as NYU Langone (and as NYU Medical Center and NYU Langone Medical Center before that). By way of example, below

is NYU Langone Medical Center's "Made for New York" campaign on a taxi top in 2014 (this campaign also included billboards and Hampton Jitneys):



18. Later in 2014, NYU Langone Medical Center launched a campaign around the opening of the Ronald O. Perelman Center for Emergency Services, which appeared throughout the summer in publications including the *Wall Street Journal*, *Daily News*, and *NY Post* and other local papers, as well as on bus shelters and phone kiosks in the community:

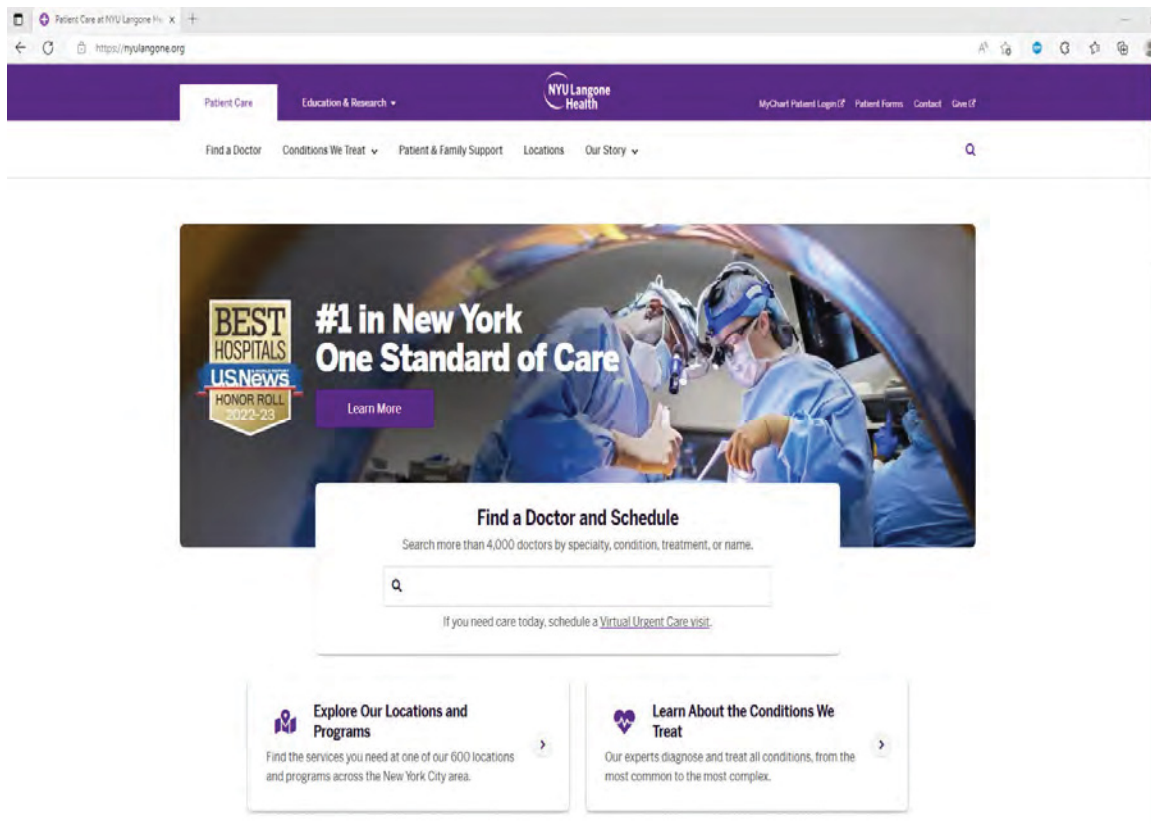


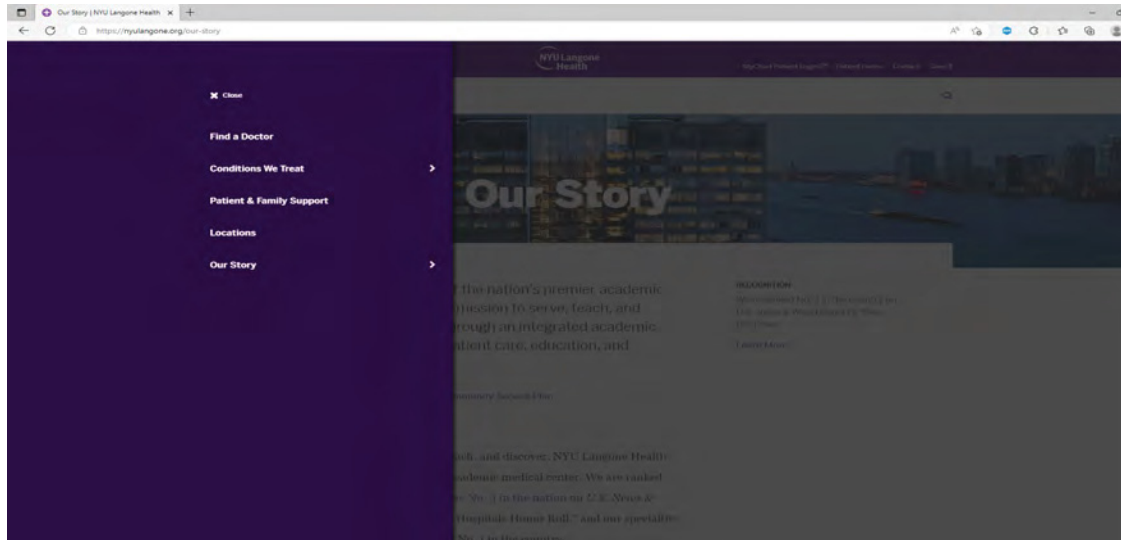
19. And as a more recent example, in November 2021, NYU Langone launched its #TheBestOutcomes campaign, encompassing a wide variety of advertisements (ranging from live action to online), which continues to the present day and includes advertisements that similarly

prominently feature the color purple:





20. NYU Langone's use of purple is also prominently featured on its website:





21. Complementing NYU Langone's longstanding use of the color purple are its registered trademarks with the U.S. Patent and Trademark Office that feature the color purple in connection with NYU Langone's provision of "health services, namely, medical services and hospital services," *e.g.*, Reg. Nos. 6471649, 6412026, as set forth in the chart below:

Mark	Reg. No.	Design	Status/Key Dates	Classification
+ and Design	RN: 6471649		Registered, August 31, 2021 Int'l Class: 44 First Use: June, 2020 Filed: September 13, 2019 Registered: August 31, 2021 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Healthcare services, namely, medical services and hospital services
DIGITAL + HEALTH and Design	RN: 6412026		Registered, July 6, 2021 Int'l Class: 44 First Use: June, 2020 Filed: September 13, 2019 Registered: July 6, 2021 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Healthcare services, namely, medical services and hospital services

22. Reg. No. 6471649, shown above, which is predominantly purple with a white accent color, is used to identify NYU Langone's Health app, which connects NYU Langone patients to their health information:



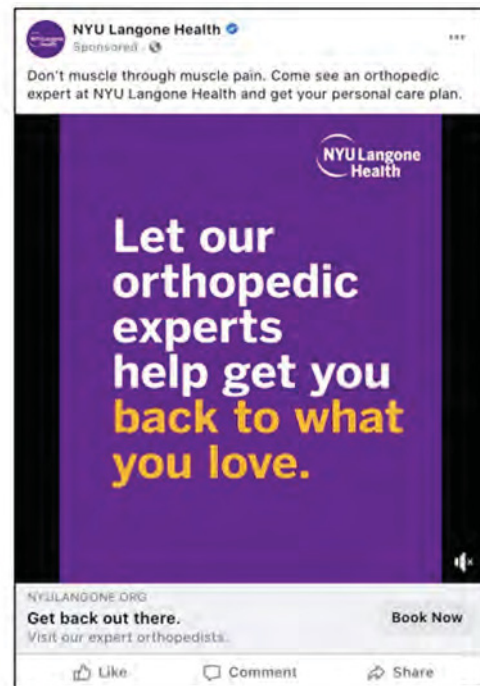
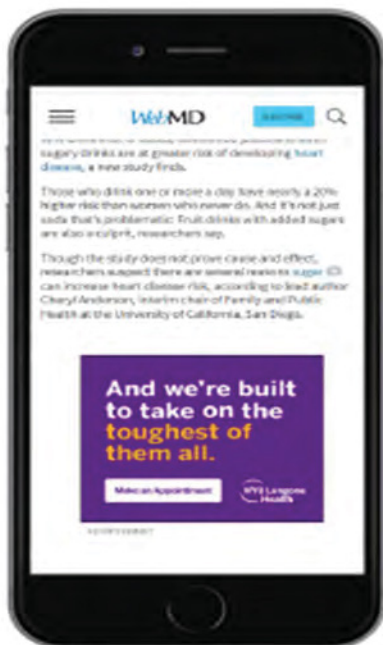
B. NYU Langone's Distinctive Advertising

23. NYU Langone has developed and implemented longstanding and strict branding requirements for internal and external advertising and communications. NYU Langone's 2017 style guide, which is still in effect today, reflects NYU Langone's visual identity and design guidelines, including preferred color combinations, *i.e.*, distinct purple and accent colors, typography, and other design elements, and provides examples of how these elements should be deployed in NYU Langone's advertising and marketing campaigns:

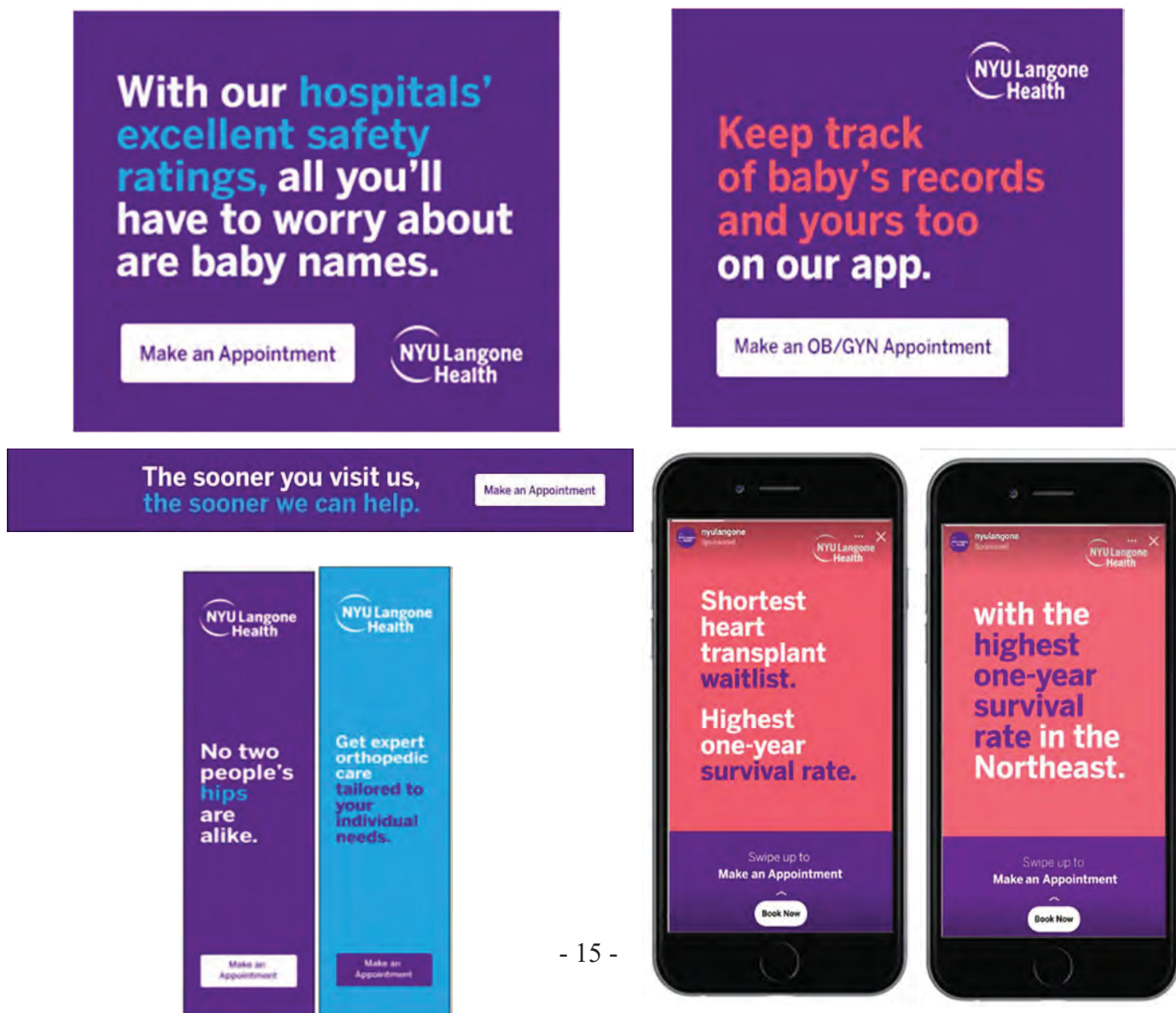


24. In connection with the implementation of its 2017 style guide, NYU Langone has used elements of the style guide to create and launch a variety of widespread, distinctive advertising and marketing campaigns that prominently feature a distinctive purple color, the use of particular accent colors (*e.g.*, teal and orange) and photos, specific font types, colors and headline styles (*i.e.*, all cap sans serif white headlines, as well as white font with certain words and phrases emphasized in the same or similar accent colors), use of purple, white, and accent color combinations in words and phrases in the ad headlines, and specific layouts in terms of placement and use of accent colors, all of which create a distinctive look and feel.

25. NYU Langone's marketing and advertising have since featured the style guide's color palette, which include NYU Langone's long-used distinctive purple color with white font, and in certain advertising, words and phrases emphasized in other colors, such as yellow/gold (the "predominantly purple" advertising). Below are examples of this style (*see also Exhibit A* at p. 1).



26. NYU Langone's marketing and advertising also includes NYU Langone's purple color and certain specific accent colors per its 2017 style guidelines. Below are examples of NYU Langone's Distinctive Advertising featuring the purple color with teal blue and white accents (the "purple with teal blue and white accents" advertising), and orange and white accents (the "purple with orange and white accents" advertising). These advertisements prominently feature the distinct purple color with teal or orange accent colors, with white font and certain words in the headlines emphasized in the accent colors. NYU Langone continues to use this style of advertising across all of its media channels today. Below are examples of digital banners featuring this style (see also **Exhibit A** at pp. 2, 7):



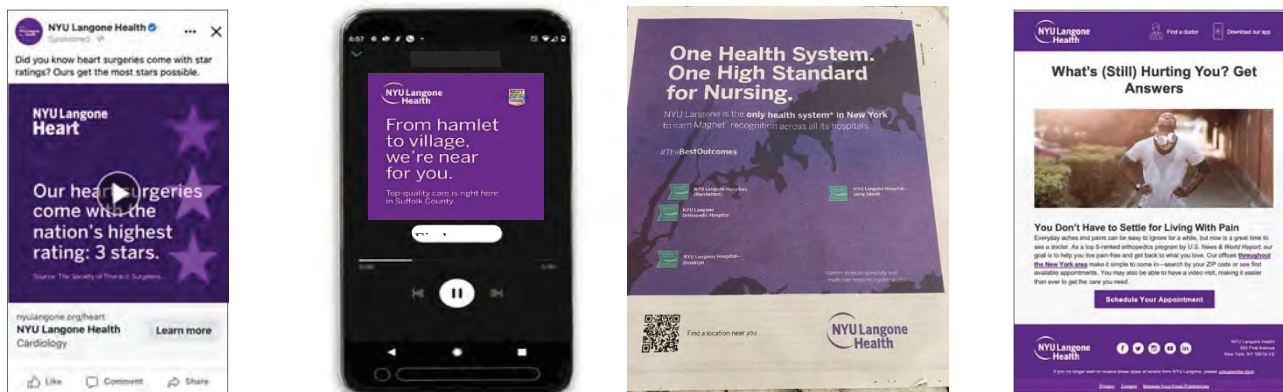
27. NYU Langone's mass media campaigns similarly reflect NYU Langone's distinctive look and feel. As noted above, in November 2021, NYU Langone launched its widespread "#TheBestOutcomes" advertising campaign, which includes advertisements featuring NYU Langone's distinctive purple color in combination with white sans serif headlines in all caps:



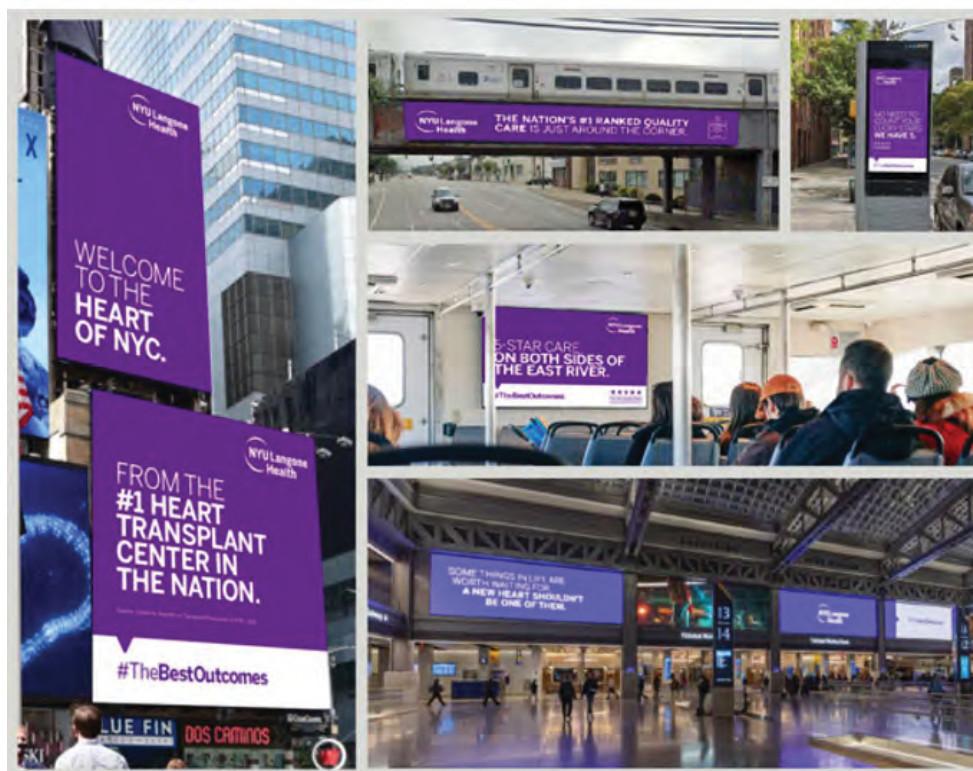
28. And shortly after *U.S. News & World Report* ranked NYU Langone #1 in New York in July 2022, NYU Langone launched its "#1 Hospital in New York" campaign in August 2022, featuring many of these same design and style elements with the same distinctive purple color in combination with white sans serif headlines in all caps:



29. NYU Langone advertises its health services through multiple media channels, including television and online video, print, billboards, transit, social media, digital banners, digital audio, email, and onsite digital signage, all prominently featuring the color purple along with other consistent design elements. Below are but a few examples:



30. NYU Langone's advertisements are widespread throughout the New York metropolitan area, and present in other northeast markets, such as Boston and Philadelphia:





31. NYU Langone has invested heavily in developing and marketing its Distinctive Advertising and NYU Langone’s brand, for at least the last five years spending over \$25 million annually for a total of at least \$125 million on advertising space alone (*i.e.*, excluding agency and creative development costs), and achieving *over 400 million advertising impressions per year*, furthering consumers’ association of the Distinctive Advertising with NYU Langone.

C. NYU Langone’s Reputation for Providing High-Quality Healthcare Services

32. NYU Langone enjoys an outstanding reputation that Northwell does not. *U.S. News & World Report’s* 2022-2023 “Best Hospitals Honor Roll” ranked NYU Langone #1 in New York State and #3 in the nation.⁸ These rankings include NYU Langone’s inpatient locations in

⁸ <https://health.usnews.com/best-hospitals/area/ny/nyu-langone-medical-center-6212925>.

Manhattan, as well as NYU Langone Hospital—Brooklyn and NYU Langone Hospital—Long Island. *U.S. News & World Report* also credits NYU Langone as the #1 hospital in the country for neurology and neurosurgery, among 13 other nationally ranked specialties, 6 of which also made the top 5 list. Northwell's rankings fell far behind NYU Langone's as shown below:

	NYU Langone Hospitals	North Shore University Hospital at Northwell Health
Overall Ranking in NY	1	5
2022 National Rankings by Specialty		
Neurology & Neurosurgery	1	45
Diabetes & Endocrinology	3	38
Geriatrics	3	24
Orthopedics	4	30
Pulmonology & Lung Surgery	4	14
Gastroenterology & GI Surgery	5	30
Cardiology & Heart Surgery	5	16

2022 U.S. News and World Report Best Hospitals

33. NYU Langone also has achieved a five-star quality rating from the Centers for Medicare & Medicaid Services.⁹

34. In 2022, Vizient, a leading healthcare consulting company, ranked NYU Langone #1 out of 107 participating comprehensive academic medical centers for quality and #1 out of 55 healthcare networks for demonstrating excellence in delivering high-quality outpatient care. In connection with the Vizient rankings, NYU Langone received the prestigious Vizient Bernard A. Birnbaum, MD, Quality Leadership Award¹⁰ and the Ambulatory Quality and Accountability

⁹<https://www.medicare.gov/care-compare/details/hospital/330214?id=391dabf3-c587-4ad2-876c-55645cb4e8dd&city=New%20York&state=NY&zipcode=>

¹⁰ <https://vizientinc-delivery.sitecorecontenthub.cloud/api/public/content/c734e4d2c4e543f68c37ece76db1f82c>

Award.¹¹

35. NYU Langone has also received Magnet® recognition from the American Nurses Credentialing Center for nursing excellence across *all* of its hospitals, and is the *only* health care system in New York to achieve such distinction.¹²

36. In Spring and Fall 2022, and Spring 2023, NYU Langone received a Grade A Leapfrog hospital safety grade for all of its participating hospitals, as well as the Gold Seal of Approval® from the Joint Commission as of 2021, which reflect a commitment to continuous improvement and delivering safe, high-quality care.¹³

37. In 2020 and 2021, NYU Langone also achieved “Top 10” rankings nationally in *U.S. News & World Report’s* 2020-2021 and 2021-2022 “Best Hospitals Honor Roll.”

38. By contrast, Northwell’s rankings on multiple fronts were far lower than NYU Langone in this general time period:

Health System	2021 CMS Star Rating	Spring 2022 Leapfrog Safety Grade	2022-23 U.S. News Best Hospitals	2022-23 U.S. News Best Hospitals (Research)	2021 Vizient Ambulatory Quality & Accountability
NYU Langone Health	5 stars (all campuses)	A (all campuses)	#3	#2	#1
Northwell Health	2-5 Stars*	A / B / C / D*	#27 - #1192*	#64 (tie)	N/A

*Data Source: CMS Star Ratings; Leapfrog Safety Grade; USNWR Best Hospitals, USNWR Best Medical Schools; Vizient; Vizient Clinical Data Base/Resource Manager (Pulled on 7.12.22, 7.18.22, 7.19.22).

39. As set forth below, Northwell began a concerted effort to copy NYU Langone’s Distinctive Advertising, following NYU Langone’s recent expansion into the Long Island market, as well as after NYU Langone’s #1 ranking in New York by *U.S. News & World Report*, and its

¹¹ *Id.*

¹² <https://www.nursingworld.org/organizational-programs/magnet/find-a-magnet-organization/>.

¹³ <https://www.qualitycheck.org/search/?keyword=nyu%20langone>.

receipt of other prestigious accolades, thus ostensibly emerging as a greater competitive threat.

D. *NYU Langone's Expansion in the Long Island Market*

40. While Northwell is headquartered on Long Island and operates the vast majority of its hospitals there, prior to 2019, NYU Langone had a limited footprint in the Long Island market. For example, prior to 2019, NYU Langone had only 171 active physicians on Long Island.

41. In 2019, NYU Langone started to emerge as a larger direct competitor of Northwell in the Long Island market with its acquisition of Winthrop University Hospital in Nassau County, which enlarged NYU Langone's health system by 25%.¹⁴ That acquisition was followed by NYU Langone's affiliation with Long Island Community Hospital at NYU Langone Health in March 2022, which further enlarged NYU Langone's footprint in the Long Island market.¹⁵ Moreover, from 2019 to 2023, NYU Langone added 735 active physicians, for a total of 906 – growing its presence in terms of active physicians by over 400%. Today, NYU Langone operates in 284 locations on Long Island (84 in Brooklyn, 25 in Queens, 127 in Nassau, and 48 in Suffolk and East End),¹⁶ including, among others, hospitals, emergency departments, primary and specialty care.

E. *Northwell's Wrongful Copying*

42. Following NYU Langone's recent rapid expansion into the Long Island market (where Northwell's facilities are primarily located) and NYU Langone's receipt and advertisement of numerous accolades in that market (including its #1 in New York ranking), Northwell appears to have changed its approach to advertising and marketing its healthcare services and facilities. Notably, prior to NYU Langone's 2019 expansion on Long Island, Northwell's advertising and marketing campaigns were visually dissimilar from those of NYU Langone's Distinctive

¹⁴ <https://nyulangone.org/our-story>.

¹⁵ <https://nyulangone.org/news/nyu-langone-health-long-island-community-hospital-affiliate>; *see also* <https://nyulangone.org/locations/long-island-community-hospital#visit>.

¹⁶ <https://nyulangone.org/locations/directory/>.

Advertising, as indicated in the below online display examples from 2018:

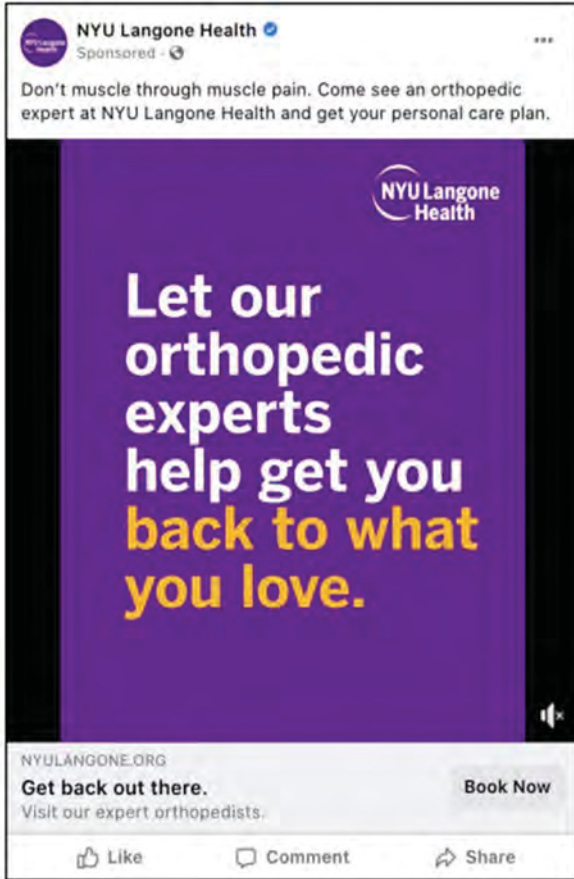


43. Northwell’s advertising and marketing appears to have taken a marked turn following NYU Langone’s expansion into the Long Island market. The examples of Northwell’s advertising below and attached hereto as **Exhibit A** establish Northwell’s intentional copying of NYU Langone’s Distinctive Advertising, in an apparent effort to trade off of the good will and reputation of NYU Langone.

44. For example, following NYU Langone’s posting of its predominantly purple advertising (with white and yellow/gold font), Northwell posted a confusingly similar social media ad, using a substantially similar (if not the same) purple as the dominant color, with similar font style, and bold white font with certain words or phrases emphasized in bold yellow/gold font (*see*

also **Exhibit A** at p. 1 for additional examples of Northwell’s copying of this specific advertising style):

NYU Langone’s social media ad launched **March 1, 2021**:



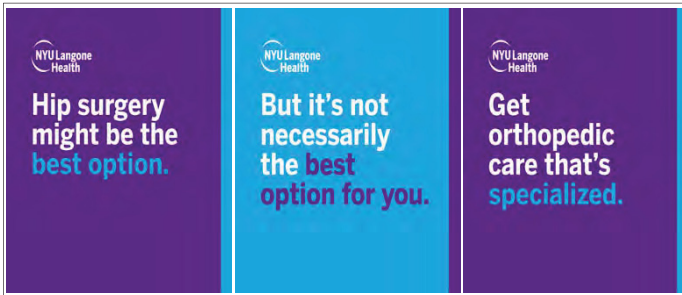
Northwell’s social media ad (first run on **February 8, 2023**):



45. Further, after NYU Langone launched its purple with teal blue and white accents advertising, Northwell launched the virtually identical advertisements below that similarly prominently featured NYU Langone’s distinctive purple color, the same or very similar accent color in teal, as well as other distinctive style elements, such as emphasizing certain words in the headlines with alternating white / purple / teal blue lettering, all of which convey a confusingly similar overall look and feel and suggest that Northwell is affiliated with, sponsored by, or endorsed by NYU Langone (and it is not) (*see also Exhibit A* at pp. 2-6 for additional examples

of Northwell's copying of this specific advertising style):

NYU Langone's March 2021 social media ad:



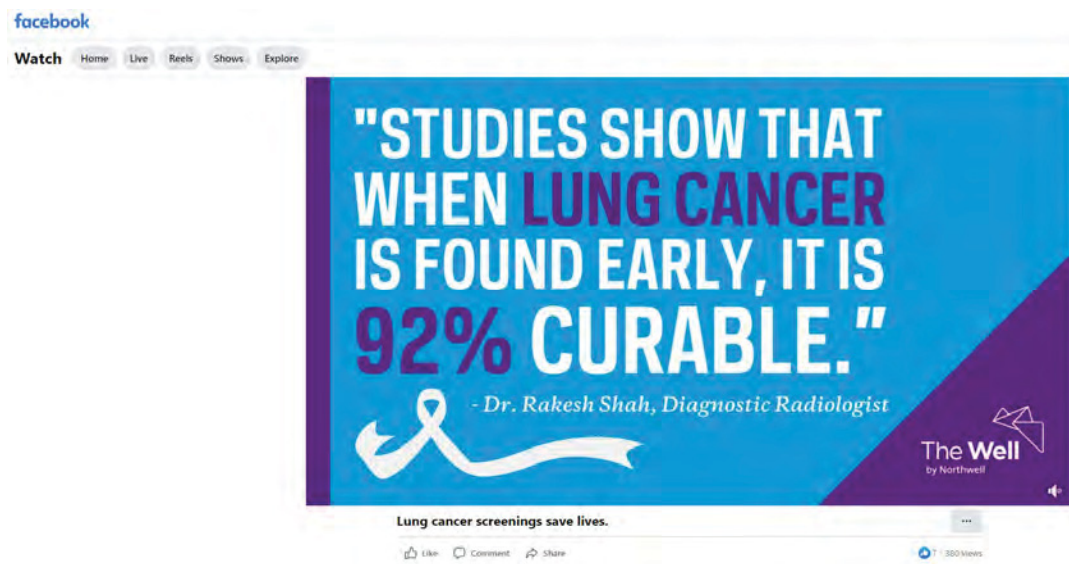
Northwell's digital banner ad
(first run on **October 18, 2021**):



Northwell's digital banner ad
(first run on **October 22, 2021**):



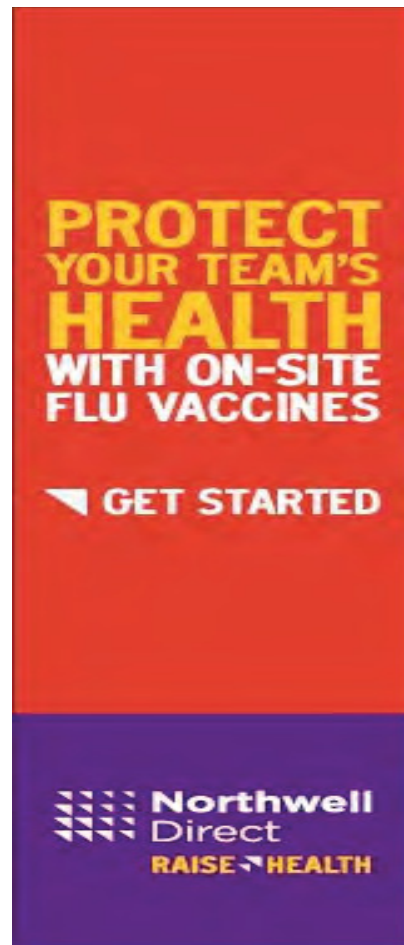
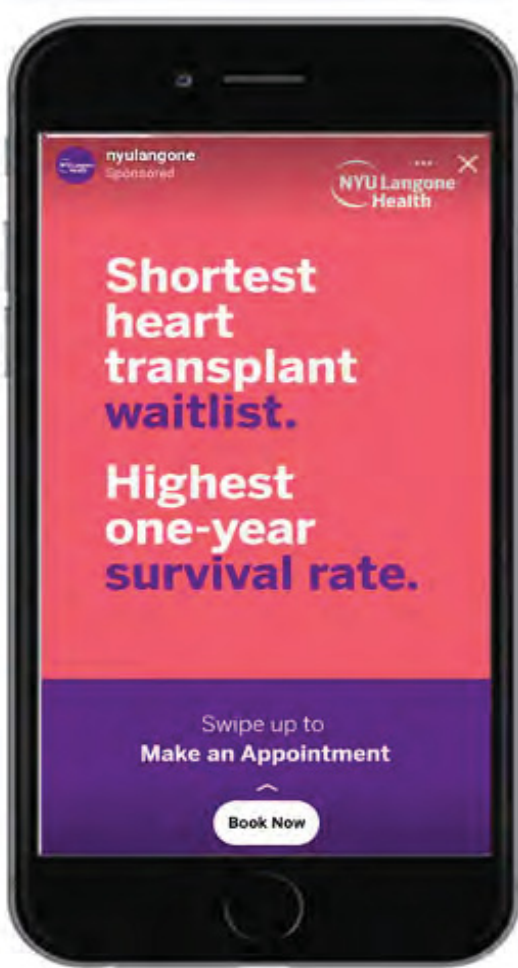
46. Northwell subsequently posted an online video that similarly copied the look and feel of NYU Langone's purple with teal blue and white accents advertising. Below is a true and correct copy of the opening screen of a video that Northwell posted on its Facebook page, on or about November 3, 2022:



47. Northwell also followed suit with respect to NYU Langone's purple with orange and white accents advertising. Below are true and correct examples of an NYU Langone January 2021 online display and a subsequent confusingly similar Northwell online display, showing similar color and color combinations, layout (column structure with smaller purple portion at the bottom and larger orange accent color on top), and look and feel (*see also Exhibit A* at pp. 7-9 for additional examples of Northwell's copying of *this* specific advertising scheme):

NYU Langone's January 2021 social media ad:

Northwell's digital banner ad
(first run on **September 20, 2021**):



48. There are myriad other examples of Northwell's copying of the look and feel of NYU Langone's advertising. For example, Northwell's advertisement below again uses the same

or similar purple color as the dominant color in the advertisement, with a similar format and color scheme (see **Exhibit A**, at p. 10):

NYU Langone's August 2020 email blast:



Northwell's social media post (first run on November 16, 2021):



49. Northwell's Confusingly Similar Advertising continues unabated. The back cover of the most recent edition of *Northwell Connections Magazine* from Lenox Hill Hospital (Vol. 1, 2023) features the following half-page print advertisement, again prominently featuring purple:



50. Northwell's *Northwell Connections Magazine* print advertisement's reference to "better outcomes," moreover, is confusingly similar to NYU Langone's brand promise "#TheBestOutcomes," which derives from NYU Langone's commitment to deliver the best outcomes to consumers who visit NYU Langone's hospitals, and is used extensively in NYU Langone's advertising.

51. Not only is Northwell referencing purported "better outcomes" in its print advertising, Northwell is also using this slogan in TV commercials, first uploaded to YouTube on May 3, 2023, where Northwell offers "better outcomes" to consumers.¹⁷

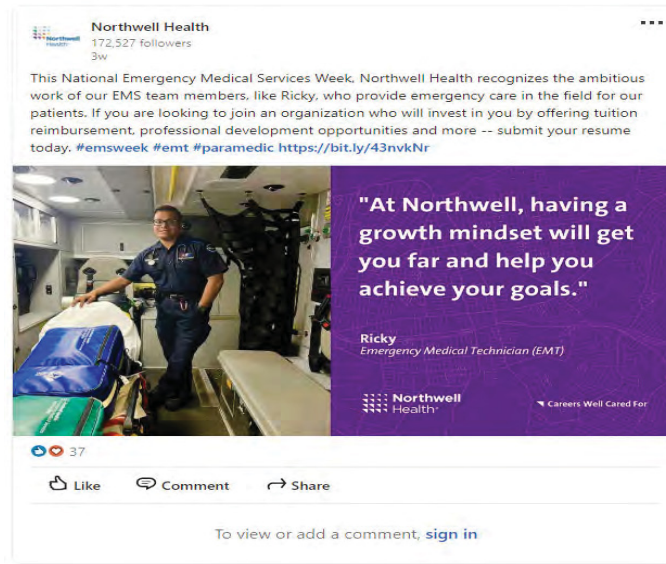
52. Northwell's *Northwell Connections Magazine* print advertisement also includes false and misleading claims about Northwell's rankings, stating that "Lenox Hill is NYC's only hospital in the Nation's Top 50," and accordingly, that Northwell "offer[s] the best care in Manhattan." Northwell's purported ranking is from "Healthgrades," whose ranking "methodology" has been highly criticized for its lack of transparency and reliance on inaccurate and incomplete reporting. To the contrary, the influential "Best Hospitals Honor Roll" by *U.S. News & World Report* – which is known in the medical community to be more expansive in the number of hospitals it ranks, and to provide more stringent, objective, and transparent methodology in its rankings – ranks NYU Langone's hospitals as #1 in New York State and in the New York City Metro area, and #3 in the nation.¹⁸ Accordingly, Northwell's claims that "Lenox Hill is NYC's only hospital in the Nation's Top 50" and that Lenox Hill "offer[s] the best care in Manhattan" based on the purported Healthgrades ranking are simply false.

53. Northwell continues to post online content that copies the look and feel of NYU

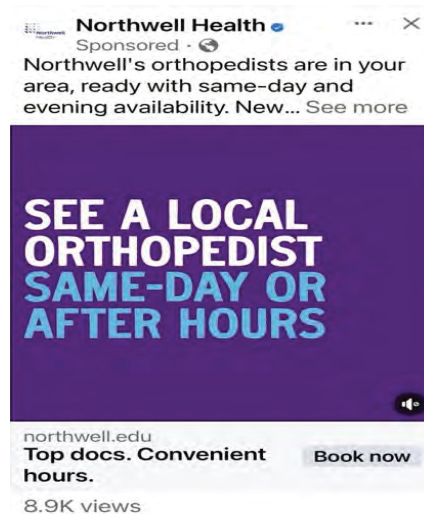
¹⁷ <https://www.youtube.com/watch?v=xh1LTqEOVJg>; *see also* <https://www.youtube.com/watch?v=wPerNKWdhsU>.

¹⁸ *See* <https://health.usnews.com/best-hospitals/area/ny/nyu-langone-medical-center-6212925#rankings>.

Langone's Distinctive Advertising. Below is a true and correct copy of a recent post that is part of Northwell's "Careers Well Cared For" campaign that Northwell posted on its LinkedIn page in May 2023 (see **Exhibit A** at p. 1), reflecting NYU Langone's purple color with white font, in the same typography or font style as NYU Langone's Distinctive Advertising:

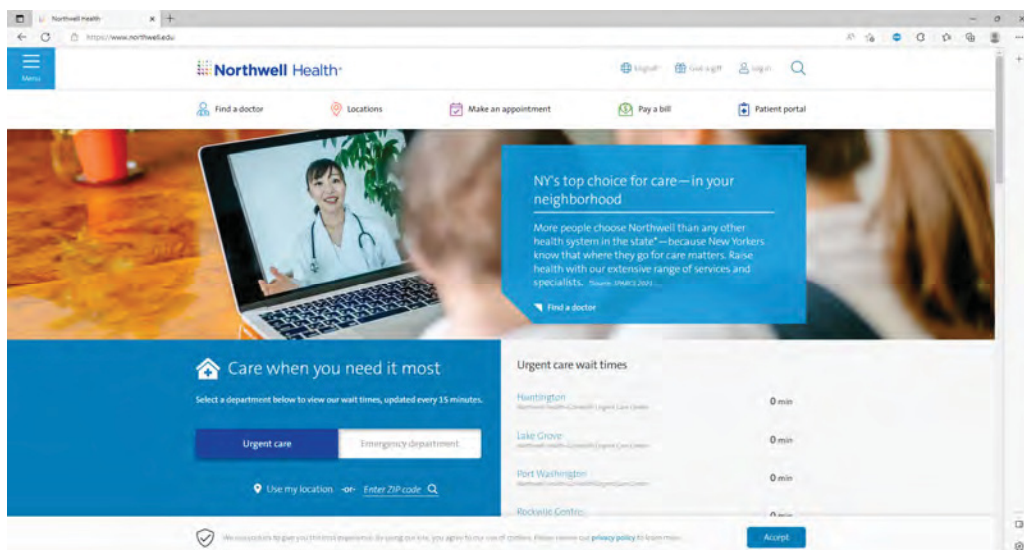


54. And on June 8, 2023, *after* NYU Langone sent Northwell a cease and desist letter on May 25, 2023, Northwell posted the below Confusingly Similar Advertising on Facebook, copying NYU Langone's use of the purple with teal blue and white accents in its advertising, which Northwell launched on Facebook and Instagram on May 15, 2023 (see **Exhibit A** at p. 4):



F. *Northwell's Use of Confusingly Similar Advertising Is Intentional*

55. Northwell's Confusingly Similar Advertising reflects Northwell's bad faith *intent* to trade off of the goodwill of NYU Langone's extensive investment in its brand. *First*, the copying is apparent on the face of the advertising, including Northwell's prominent use of the exact or nearly exact color purple, long associated with NYU Langone and used by NYU Langone in its advertising, in combination with other design elements similarly used in NYU Langone's Distinctive Advertising, as discussed above. *Second*, on information and belief, Northwell began launching virtually identical advertising only *after* NYU Langone significantly expanded its operations on Long Island, and as NYU Langone received its multitude of accolades, including its #1 in New York ranking, thus apparently posing a perceived greater competitive threat to Northwell. *Third*, unlike NYU Langone, whose branding has a cohesive "look and feel" across all media, including its website (*see* <https://nyulangone.org>, reflecting use of its purple brand identifier and other design elements), the overall "look and feel" of Northwell's website (<https://www.northwell.edu>) and other signage in the market (shown below) is markedly different than the Confusingly Similar Advertising, reflecting a clear intent to trade off of the good will and reputation of NYU Langone Health through use of the Confusingly Similar Advertising:





56. *Finally*, to compound its apparent intention to capitalize on NYU Langone's substantial investment in its brand, Northwell has bathed its Peconic Bay Medical Center in the same or nearly same purple color that is prominently featured in NYU Langone's Distinctive Advertising as well as in the community:¹⁹



¹⁹ <https://www.facebook.com/photo.php?fbid=413380220790349&set=pb.100063551232290.-2207520000.&type=3>.

57. Northwell's use of its Confusingly Similar Advertising and other deceptive conduct paints a picture of a competitor intentionally attempting to appropriate NYU Langone's well-established brand and reputation in response to a perceived competitive threat and to capitalize on NYU Langone's goodwill and status as the #1 hospital in New York State and in New York City – one of many rankings that are significantly higher than Northwell's. Northwell's conduct is not only unfair, but by hitching its brand to NYU Langone, Northwell has created a likelihood of confusion as to the affiliation, connection, or association of Northwell with NYU Langone, to the detriment and harm of NYU Langone.

58. Northwell's scheme has, in fact, created actual confusion in the market, causing confusion as to a Northwell hospital's affiliation (mistaken as an NYU Langone hospital) based on Northwell's Confusingly Similar Advertising. This actual confusion, as well as the fact that NYU Langone and Northwell are direct competitors in the same market, advertising similar healthcare services in the same media channels, and directed to the same healthcare consumers, strongly indicate that Northwell's Confusingly Similar Advertising is likely to cause consumer confusion and harm to NYU Langone.

59. On May 25, 2023, counsel for NYU Langone contacted Northwell, setting forth in detail Northwell's pattern and practice of copying NYU Langone's Distinctive Advertising, and demanding that Northwell cease and desist using its continued Confusingly Similar Advertising and other deceptive conduct. NYU Langone requested a response by June 2, 2023. Following receipt of NYU Langone's cease and desist communication, Northwell continued to use its Confusingly Similar Advertising. Having heard nothing beyond an initial acknowledgement of receipt, on June 2, 2023, counsel for NYU Langone contacted Northwell again regarding a response. Outside counsel for Northwell responded that day that they were retained by Northwell

to respond to NYU Langone's May 25, 2023 letter and that they would respond "shortly." Northwell has yet to respond to NYU Langone's May 25, 2023 cease and desist letter.

Count I
(Infringement of Unregistered Trade Dress under 15 U.S.C. § 1125(a)(1)(A))

60. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

61. NYU Langone's valid trade dress in its Distinctive Advertising is comprised of the prominent use of a distinctive purple color, the use of particular accent colors (*e.g.*, teal and orange) and photos, specific font types, colors and headline styles (*i.e.*, all cap sans serif white headlines, as well as white font with certain words and phrases emphasized in the same or similar accent colors), use of purple, white, and accent color combinations in words and phrases in the ad headlines, and specific layouts in terms of placement and use of accent colors, all of which create a distinctive look and feel (the "NYU Langone Trade Dress").

62. NYU Langone has made a substantial investment of time, money – at least \$125 million in just the last 5 years – and effort to develop and implement its Distinctive Advertising campaigns.

63. By virtue of its use of the NYU Langone Trade Dress, NYU Langone is the owner at common law of the NYU Langone Trade Dress in connection with its healthcare services and facilities, and has established valuable goodwill in the NYU Langone Trade Dress. NYU Langone's rights in and to the NYU Langone Trade Dress predate any rights that Northwell could claim in its Confusingly Similar Advertising.

64. The NYU Langone Trade Dress constitutes valid trade dress because it is inherently distinctive, non-functional, and serves to identify NYU Langone.

65. In addition, the NYU Langone Trade Dress has acquired secondary meaning at least

in light of NYU Langone's substantial marketing efforts, including the breadth of its advertising efforts as well as significant annual advertising spend, the length of time that NYU Langone has used its Distinctive Advertising, which identifies NYU Langone as the source of its particularly high-quality health care services and facilities. And NYU Langone has received numerous awards and accolades for its healthcare services, and similarly has received substantial unsolicited media coverage of NYU Langone's healthcare services, including images associating NYU Langone with purple.

66. The NYU Langone Trade Dress features unique elements that in combination create an overall look and feel that is readily identifiable by consumers as originating with NYU Langone and/or associated with NYU Langone.

67. The NYU Langone Trade Dress represents a series of arbitrary, fanciful, and/or suggestive artistic design choices creating a unique overall advertising campaign and brand presentation that serves to identify NYU Langone and distinguish NYU Langone from others in the marketplace.

68. Northwell's Confusingly Similar Advertising so closely resembles the NYU Langone Trade Dress that it is likely to cause confusion, mistake, or deception. Such use is likely to cause persons to believe, contrary to fact, that Northwell's healthcare services and facilities are rendered, sponsored, sold, approved by and/or connected with NYU Langone, thereby infringing the NYU Langone Trade Dress and diminishing and impairing NYU Langone's good will in the NYU Langone Trade Dress.

69. There is no functional need for Northwell to adopt, use, or plagiarize the NYU Langone Trade Dress.

70. Northwell's acts of infringement are willful and intentional.

71. On information and belief, interstate commerce is affected by Northwell's conduct.

72. Northwell's conduct has caused damage to NYU Langone in an amount to be determined at trial, and unless restrained, will continue to seriously and irreparably impair NYU Langone's business, goodwill and reputation, for which there is no adequate remedy at law.

Count II

(Unfair Competition and False Designation of Origin under 15 U.S.C. § 1125(a)(1)(A))

73. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

74. Northwell's use of the Confusingly Similar Advertising, as well as other conduct, such as the use of purple outdoor lighting on its healthcare facilities, constitutes unfair competition and a false designation of origin, in that such conduct is likely to cause confusion, to cause mistake, or to deceive persons as to the affiliation, connection, or association of Northwell with NYU Langone, or as to the origin, sponsorship, or approval of Northwell's healthcare services or commercial activities by NYU Langone.

75. There is absolutely no affiliation, connection, or association between NYU Langone and Northwell. Rather, they are direct competitors.

76. Indeed, Northwell has committed the foregoing acts with full knowledge of NYU Langone's Distinctive Advertising. Thus, Northwell has willfully, deliberately, and maliciously engaged in these acts with the intent to compete unfairly with NYU Langone.

77. Northwell's wrongful and infringing conduct is willful and intentional.

78. On information and belief, interstate commerce is affected by Northwell's conduct.

79. Northwell's conduct has caused damage to NYU Langone in an amount to be determined at trial, and unless restrained, will continue to seriously and irreparably impair NYU Langone's business, goodwill and reputation, for which there is no adequate remedy at law.

Count III
(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

80. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

81. Northwell has made false or misleading statements of fact in its Confusingly Similar Advertising.

82. Specifically, a print advertisement that appeared in the recent edition of *Northwell Connections Magazine* for Lenox Hill Hospital (Vol. 1, 2023) includes false and misleading claims that Northwell made about its rankings, particularly that “Lenox Hill is NYC’s only hospital in the Nation’s Top 50,” and accordingly, that Northwell “offer[s] the best care in Manhattan.” To the contrary, *U.S. News & World Report*’s “Best Hospitals Honor Roll,” ranks NYU Langone as the #1 hospital in New York State and in the New York City Metro area, and #3 in the nation, but ranks Lenox Hill Hospital at Northwell Health as the #4 hospital in New York State.²⁰

83. Accordingly, Northwell’s claim that “Lenox Hill is NYC’s only hospital in the Nation’s Top 50” and that it “offer[s] the best care in Manhattan,” based on the purported Healthgrades ranking, is a false or misleading statement of fact in a commercial advertisement about the nature, quality, or characteristics of Northwell’s healthcare services.

84. Northwell’s false or misleading statements actually deceived or have the tendency to deceive a substantial segment of consumers.

85. On information and belief, interstate commerce is affected by Northwell’s conduct.

86. Well aware of NYU Langone’s #1 ranking in New York by *U.S. News & World Report*, Northwell willfully, deliberately, and maliciously made the aforementioned false or misleading statements with an intent to deceive consumers.

²⁰ <https://health.usnews.com/best-hospitals/area/ny/lenox-hill-hospital-6212990>.

87. Northwell's conduct has caused damage to NYU Langone in an amount to be determined at trial, and unless restrained, will continue to seriously and irreparably impair the value of NYU Langone's business, goodwill, and reputation, for which there is no adequate remedy at law.

Count IV
(Deceptive Acts and Practices – N.Y. General Business Law § 349)

88. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

89. This claim arises under the laws of the State of New York.

90. By reason of the acts and practices set forth above, Northwell has engaged, and is engaging, in consumer-oriented conduct which is deceptive or misleading in a material way, constituting unfair and deceptive business practices in violation of Section 349 of the New York General Business Law.

91. Northwell's activities are without NYU Langone's permission or authority. To the contrary, NYU Langone has demanded that Northwell cease using its Confusingly Similar Advertising, but Northwell has refused or failed to do so.

92. Northwell's knowing and willful use of its Confusingly Similar Advertising in connection with its healthcare facilities and provision of services is likely to mislead a sensible consumer acting reasonably under the circumstances.

93. Northwell's conduct is likely to deceive or mislead consumers as to whether Northwell's healthcare facilities and services are affiliated with, sponsored by, or endorsed by NYU Langone.

94. The acts and conduct of Northwell are misleading and likely to cause confusion among consumers as to the origin or association of Northwell with NYU Langone.

95. Northwell’s conduct has resulted, or is likely to result, in consumer injury or harm to the public interest.

96. As a proximate result of Northwell’s actions, NYU Langone has suffered and will continue to suffer immediate and irreparable harm as well as great damage to its business, good will, reputation, and profits in an amount to be proven at trial. NYU Langone’s remedies at law are inadequate to compensate for this harm and damage.

Count V
(False Advertising – N.Y. General Business Law § 350)

97. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

98. This claim arises under the laws of the State of New York.

99. By reason of the acts and practices, set forth herein, Northwell has engaged, and is engaging, in consumer-oriented conduct which is deceptive or misleading in a material way, and such conduct constitutes a violation of New York General Business Law § 350, which declares unlawful “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service.” Certain of Northwell’s Confusingly Similar Advertising as described above, and throughout, is “false advertising” as defined under New York General Business Law § 350-a.

100. Northwell has willfully and knowingly made false or misleading statements of material fact in its Confusingly Similar Advertising.

101. Specifically, a print advertisement that appeared in the recent edition of *Northwell Connections Magazine* for Lenox Hill Hospital (Vol. 1, 2023) includes false and misleading claims that Northwell made about its rankings, particularly that “Lenox Hill is NYC’s only hospital in the Nation’s Top 50,” and accordingly, that Northwell “offer[s] the best care in Manhattan.” To the contrary, *U.S. News & World Report*’s “Best Hospitals Honor Roll,” ranks NYU Langone as the

#1 hospital in New York State and in the New York City Metro area, and #3 in the nation, but ranks Lenox Hill Hospital at Northwell Health as the #4 hospital in New York State.²¹

102. Accordingly, Northwell's claim that "Lenox Hill is NYC's only hospital in the Nation's Top 50" and that it "offer[s] the best care in Manhattan," based on the purported Healthgrades ranking, is a false or misleading statement of fact in a commercial advertisement about the nature, quality, or characteristics of Northwell's healthcare services.

103. Northwell's false and misleading statements actually deceived or have the tendency to deceive a substantial segment of consumers.

104. Northwell's deception is likely to influence the healthcare decisions of consumers.

105. Northwell's conduct has resulted, or is likely to result, in consumer injury or harm to the public interest.

106. As a proximate result of Northwell's actions, NYU Langone has suffered and will continue to suffer immediate and irreparable harm as well as great damage to its business, good will, and reputation. NYU Langone's remedies at law are inadequate to compensate for this harm and damage.

Count VI
(Common Law Trade Dress Infringement)

107. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

108. NYU Langone is the owner at common law of the NYU Langone Trade Dress in connection with its healthcare services and facilities. NYU Langone has established valuable goodwill in the NYU Langone Trade Dress.

109. NYU Langone has made a substantial investment of time, money – at least \$125

²¹ <https://health.usnews.com/best-hospitals/area/ny/lenox-hill-hospital-6212990>.

million in just the last 5 years – and effort to develop and implement its advertising campaign.

110. NYU Langone's rights in and to the NYU Langone Trade Dress predate any rights that Northwell could claim in its Confusingly Similar Advertising complained of herein.

111. The NYU Langone Trade Dress constitutes valid trade dress because it is inherently distinctive, non-functional, and serves to identify NYU Langone.

112. In addition, the NYU Langone Trade Dress has acquired secondary meaning at least in light of NYU Langone's substantial marketing efforts, including the breadth of its advertising efforts as well as significant annual advertising spend, and the length of time that NYU Langone has used its Distinctive Advertising, which identifies NYU Langone as the source of its particularly high-quality healthcare services and facilities. And NYU Langone has received numerous awards and accolades for its healthcare services, and similarly has received substantial unsolicited media coverage of NYU Langone's healthcare services, including images associating NYU Langone with purple.

113. The NYU Langone Trade Dress features unique elements that in combination create an overall look and feel that is readily identifiable by consumers as originating with NYU Langone and/or associated with NYU Langone.

114. The NYU Langone Trade Dress represents a series of arbitrary, fanciful, and/or suggestive artistic design choices creating a unique overall advertising campaign and brand presentation that serves to identify NYU Langone and distinguish NYU Langone from others in the marketplace.

115. Northwell's activities alleged herein, including use of its Confusingly Similar Advertising and infringement of the NYU Langone Trade Dress, constitute unauthorized use in commerce of certain words and names in connection with the advertising of goods and services

that it is likely to cause confusion, mistake, or deception. Such use is likely to induce ordinary consumers to believe, contrary to fact, that Northwell's services are rendered, sponsored, sold, approved by, or connected with NYU Langone, thereby infringing upon the NYU Langone Trade Dress and diminishing and impairing NYU Langone's good will in the Distinctive Advertising.

116. There is no functional need for Northwell to adopt, use, or plagiarize the NYU Langone Trade Dress.

117. Indeed, Northwell has committed the foregoing acts with full knowledge of NYU Langone's Distinctive Advertising. Thus, Northwell has willfully, deliberately, and maliciously engaged in these acts with the intent to compete unfairly with NYU Langone.

118. Northwell's Confusingly Similar Advertising constitutes infringement of unregistered trade dress under the common law of the State of New York.

119. Northwell's conduct has caused damage to NYU Langone in an amount to be determined at trial, and unless restrained, will continue to seriously and irreparably impair NYU Langone's business, goodwill, and reputation, for which there is no adequate remedy at law.

Count VII
(Common Law Unfair Competition)

120. NYU Langone repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

121. Northwell's conduct complained of herein is likely to confuse the public as to the sponsorship of Northwell's healthcare services and facilities, or to cause mistake, or to deceive the public into believing that Northwell's healthcare services and facilities are authorized, sponsored, endorsed, or affiliated with NYU Langone, in violation of NYU Langone's rights in the NYU Langone Trade Dress under New York State common law.

122. Upon information and belief, Northwell used its Confusingly Similar Advertising

with constructive and/or actual knowledge of NYU Langone's prior use of its Distinctive Advertising, and intended to benefit through its use of its Confusingly Similar Advertising. By using its Confusingly Similar Advertising, Northwell has been unjustly enriched and NYU Langone has been damaged.

123. By misappropriating and trading upon the goodwill and business reputation represented by NYU Langone's Distinctive Advertising, Northwell has been, and unless enjoined by this Court, will continue to be, unjustly enriched at NYU Langone's expense.

124. The acts and conduct of Northwell as alleged above in this Complaint constitute intentional and willful unfair competition pursuant to the common law of New York.

125. Northwell's conduct has caused and will continue to cause damage to NYU Langone and is causing irreparable harm to NYU Langone for which there is no adequate remedy at law.

126. NYU Langone is entitled to recover damages and to recover its costs herein in an amount to be proven at trial. NYU Langone is also entitled to injunctive relief against the Northwell.

JURY DEMAND

127. NYU Langone demands trial by jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, NYU Langone demands judgment against Northwell, as follows:

1. Permanently enjoining and restraining Northwell and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, any and all other entities owned or controlled by Northwell, and all of those in active concert and participation with Northwell (the "Enjoined Parties") as follows:

- a. from any future use of the Confusingly Similar Advertising in any manner;
- b. from further infringing NYU Langone's Trade Dress in its Distinctive Advertising;
- c. from engaging in any act calculated to cause consumers to falsely believe that Northwell's healthcare services and facilities are sponsored, affiliated, associated or approved by NYU Langone; and
- d. from otherwise competing unfairly with NYU Langone in any manner.

2. Requiring the Enjoined Parties to take all action to remove all existing Confusingly Similar Advertising from all media channels and other outlets, including but not limited to, digital, social, print, transit, billboards and other outdoor media, and issue corrective advertising;

3. Requiring that Northwell file with the Court and serve on the undersigned counsel for NYU Langone, within thirty (30) days after the entry of judgment, a written report under oath setting forth in detail the manner in which Northwell has complied with the injunction ordered by this Court;

4. Requiring Northwell to provide an accounting of all revenue and profits generated from its use of NYU Langone's Trade Dress;

5. Entering judgment in favor of NYU Langone and against Northwell in an amount to be determined at trial, including, but not limited to, compensatory damages, statutory damages, treble damages, restitution, including disgorgement of profits, punitive damages, and pre-judgment and post-judgment interest, as permitted by law;

6. Declaring this case exceptional, and ordering Northwell to pay to NYU Langone the costs of this action, filing fees, and its reasonable attorneys' fees under 15 U.S.C. § 1117(a); and

7. Granting such other and further relief as the Court deems just, equitable and proper.

Dated: June 15, 2023

Respectfully submitted,

By: /s/ Natsayi Mawere

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